

Reprinted

1-9-95 Judiciary
P.132 1-18-95 Do Pass
FILED JAN 9 1995

SENATE FILE 7
BY VILSACK

Passed Senate, Date ^(P.157) 1/23/95 Passed House, Date _____
Vote: Ayes 47 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the knowing transmission of the human
2 immunodeficiency virus and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SF 7

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 Section 1. Section 141.23, subsection 1, Code 1995, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. k. Counsel for the prosecution if a person
4 is charged with sexual abuse in the second degree pursuant to
5 section 709.3 which also involves the knowing transmission of
6 HIV, sexual abuse in the third degree pursuant to section
7 709.4 which also involves the knowing transmission of HIV, or
8 for the knowing transmission of HIV pursuant to section
9 709.4A, for the sole purpose of establishing the defendant's
10 knowledge of the defendant's HIV status.

11 Sec. 2. Section 622.10, Code 1995, is amended by adding
12 the following new unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. Notwithstanding the prohibitions
14 of this section, the physician of a person charged with sexual
15 abuse in the second degree pursuant to section 709.3 which
16 also involves the knowing transmission of the human
17 immunodeficiency virus, or sexual abuse in the third degree
18 pursuant to section 709.4 which also involves the knowing
19 transmission of the human immunodeficiency virus, or for the
20 knowing transmission of the human immunodeficiency virus
21 pursuant to section 709.4A, as human immunodeficiency virus is
22 defined in section 141.21, shall disclose information to the
23 counsel for the prosecution only to the extent that the
24 information establishes the defendant's knowledge of the
25 defendant's human immunodeficiency virus status.

26 Sec. 3. Section 709.3, Code 1995, is amended to read as
27 follows:

28 709.3 SEXUAL ABUSE IN THE SECOND DEGREE.

29 A person commits sexual abuse in the second degree when the
30 person commits sexual abuse under any of the following
31 circumstances:

32 1. During the commission of sexual abuse the person
33 displays in a threatening manner a dangerous weapon, or uses
34 or threatens to use force creating a substantial risk of death
35 or serious injury to any person.

1 2. The other participant is under the age of twelve.
2 3. The person is aided or abetted by one or more persons
3 and the sex act is committed by force or against the will of
4 the other participant.

5 4. The offense under subsection 1, 2, or 3 involved the
6 possibility of transfer of infectious bodily fluids as defined
7 in section 141.22A, and the person knew at the time of the
8 commission of the offense that the person's human
9 immunodeficiency virus status was positive.

10 Sexual abuse in the second degree is a class "B" felony.
11 However, notwithstanding section 902.9, subsection 1, the
12 maximum sentence for a person convicted under subsection 4, is
13 for a period of confinement not to exceed fifty years.

14 Sec. 4. Section 709.4, Code 1995, is amended to read as
15 follows:

16 709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

17 A person commits sexual abuse in the third degree when the
18 person performs a sex act under any of the following
19 circumstances:

20 1. The act is done by force or against the will of the
21 other participant, whether or not the other participant is the
22 person's spouse or is cohabiting with the person.

23 2. The act is between persons who are not at the time
24 cohabiting as husband and wife and if any of the following are
25 true:

26 a. The other participant is suffering from a mental defect
27 or incapacity which precludes giving consent.

28 b. The other participant is twelve or thirteen years of
29 age.

30 c. The other participant is fourteen or fifteen years of
31 age and any of the following are true:

32 (1) The person is a member of the same household as the
33 other participant.

34 (2) The person is related to the other participant by
35 blood or affinity to the fourth degree.

1 (3) The person is in a position of authority over the
2 other participant and uses that authority to coerce the other
3 participant to submit.

4 (4) The person is five or more years older than the other
5 participant.

6 3. The offense under subsection 1 or 2 involved the
7 possibility of transfer of infectious bodily fluids as defined
8 in section 141.22A, and the person knew at the time of the
9 commission of the offense that the person's human
10 immunodeficiency virus status was positive.

11 Sexual abuse in the third degree is a class "C" felony.
12 However, sexual abuse in the third degree, if committed
13 pursuant to subsection 3, is a class "B" felony.

14 Sec. 5. NEW SECTION. 709.4A SEXUAL ACTIVITY BY PERSON --
15 KNOWING TRANSMISSION OF HUMAN IMMUNODEFICIENCY VIRUS.

16 A person who engages in sexual activity with another
17 person, in a manner capable of transmitting the human
18 immunodeficiency virus, as determined by the centers for
19 disease control and prevention of the United States department
20 of health and human services and adopted by rule of the Iowa
21 department of public health, who knows at the time of
22 engagement in the sexual activity that the person's human
23 immunodeficiency virus status is positive and who does not
24 inform the other participant of the person's status prior to
25 the sexual activity, is guilty of a class "B" felony.
26 Notwithstanding section 902.9, subsection 1, the maximum
27 sentence of a person convicted under this section is a period
28 of confinement not to exceed fifty years.

29 EXPLANATION

30 This bill establishes penalties and makes other conforming
31 changes in the Code relating to the establishment of the
32 knowing transmission of the human immunodeficiency virus (HIV)
33 as a crime. The bill enhances the penalty for the commission
34 of sexual abuse in the third degree to a class "B" felony
35 rather than a class "C" felony, increasing the potential

1 maximum sentence length of confinement from 10 to 25 years, if
2 the sexual abuse is committed by a person who knows that the
3 HIV status of the person is positive at the time of the
4 commission of the sexual abuse. The bill also increases the
5 penalty for a conviction of sexual abuse in the second degree,
6 if the person committing the sexual abuse knew that the
7 person's HIV status was positive at the time of the commission
8 of the sexual abuse, from a maximum of a 25-year sentence to a
9 maximum of 50 years. The bill also establishes the knowing
10 transmission of HIV to another through sexual activity without
11 informing the other person prior to the activity of the
12 person's HIV positive status as a class "B" felony subject to
13 a maximum sentence of 50 years confinement. The bill also
14 provides for the accessing of the records of an alleged
15 perpetrator of sexual abuse in the second or third degree or
16 of an alleged perpetrator of the crime of the knowing
17 transmission of HIV, by the counsel for the prosecution, for
18 the sole purpose of establishing the alleged perpetrator's
19 knowledge of the person's HIV status at the time of the
20 commission of the crime. The bill also provides for the
21 breaching of the physician-patient privilege when the
22 physician of an alleged perpetrator is able to provide
23 information regarding the knowledge of the alleged perpetrator
24 of the alleged perpetrator's HIV status at the time of the
25 commission of the offense.

26
27
28
29
30
31
32
33
34
35

**SENATE FILE 7
FISCAL NOTE**

The estimate for Senate File 7 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 7 establishes penalties and makes other conforming changes in the Code relating to the establishment of the knowing transmission of the Human Immunodeficiency Virus (HIV) as a crime, enhances the penalty for the commission of sexual abuse in the third degree to a Class "B" felony rather than a Class "C" felony, increasing the potential maximum sentence length of confinement from 10 to 25 years, if the sexual abuse is committed by a person who knows that the HIV status of the person is positive at the time of the commission of the sexual abuse, and increases the penalty for a conviction of sexual abuse in the second degree from a maximum of a 25-year sentence to a maximum of 50 years, if the person committing the sexual abuse knew that the person's HIV status was positive at the time of the commission of the sexual abuse.

The Bill also establishes the knowing transmission of HIV to another through sexual activity without informing the other person prior to the activity of the person's HIV positive status as a Class "B" felony subject to a maximum sentence of 50 years confinement and provides for the accessing of the records of an alleged perpetrator of sexual abuse in the second or third degree or of an alleged perpetrator of the crime of the knowing transmission of HIV.

Assumptions:

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. The proposed law will become effective July 1, 1995. Lag effects are assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
4. Some offenders currently being convicted of Prostitution would be prosecuted under Section 709.4A, Code of Iowa, and SF 7.
5. Some persons involved in sexual activity not currently prohibited by law will be prosecuted under Section 709.4A, Code of Iowa, and SF 7.
6. The number of HIV-infected persons in Iowa (and HIV-infected sex offenders) is assumed to quadruple by the year 2000, which is the same rate of growth in HIV-infected persons projected worldwide by the World Health Organization.

Fiscal Analysis:

Within the last 12 months, one offender was admitted to prison in Iowa for

-2-

Sexual Abuse-3rd degree, who is identified as HIV positive according to the Department of Corrections. It is estimated that one case in the first year would be affected by the proposed law change, and the number of cases will continue to increase, equally affecting Sexual Abuse-2nd and 3rd degree offenders. The actual affect will not be an increase in the prison population the first four fiscal years. By FY 1998, the average length of stay for Sexual Abuse-2nd and 3rd degree offenders will have increased to 41 months.

In FY 1992, 160 offenders were convicted of aggravated misdemeanor Prostitution. It is estimated that four cases in the first year would be affected and the number of cases will continue to increase. However, only two cases will likely impact the prison population the first year due to lag effects.

Some persons who will be prosecuted for engaging in sexual activity not currently prohibited by law will also impact the prison population. It is estimated that four cases in the first year would be affected and the number of cases will continue to increase. However, only two cases will likely impact the prison population the first year due to lag effects.

In all three cases, the following growth in the prison population may be expected in the next five years as a result of the adoption of SF 7:

Increase in Admissions to Correctional Facilities

Description	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
Prison					
Admissions	4	14	20	26	34
Population Increase	4	18	38	64	98

Fiscal Effect on the General Fund:

The Department of Corrections may experience the following increase in costs:

Description	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
Prison	\$16,000	\$72,000	\$151,000	\$254,000	\$389,000

NOTE: The cost per year for an inmate is estimated to be \$3,971. Additionally, due to the expected rapid growth in HIV-infected persons, it is reasonable to assume that the long-range impact of SF 7 on the prison population, if made effective, would be higher than the data provided in this five-year analysis.

Sources:

Department of Human Rights, Criminal Juvenile Justice Planning
 Department of Corrections
 Judicial Department

(LSB 1074ss, LAM)

S-3016

1 Amend Senate File 7 as follows:

2 1. Page 1, line 4, by inserting after the word
3 "with" the following: "a crime which involves a
4 dangerous weapon as defined in section 702.7A".

5 2. Page 1, line 14, by inserting after the word
6 "with" the following: "a crime in which a dangerous
7 weapon as defined pursuant to section 702.7A, is
8 involved,".

9 3. Page 1, by inserting after line 25 the
10 following:

11 "Sec. ____ . NEW SECTION. 702.7A DANGEROUS WEAPON
12 -- INFECTIOUS BODILY FLUIDS.

13 For the purposes of sections 80A.4, 236.12, 708.1,
14 708.2, 708.2A, 708.2C, 708.6, 708.8, 708.11, 709.3,
15 710.3, 711.2, 713.4, 713.5, 713.6, and 719.1,
16 "dangerous weapon" includes the possibility of
17 transfer of infectious bodily fluids as defined in
18 section 141.22A, when the alleged perpetrator knew at
19 the time of the commission of the offense that the
20 person's human immunodeficiency virus status was
21 positive. The penalty established for a crime cited
22 in this section in which a dangerous weapon is used or
23 displayed, shall also apply to crimes in which the
24 dangerous weapon is defined pursuant to this section,
25 unless a specific penalty for the commission of a
26 crime by a person which involves the use or display of
27 a dangerous weapon as defined in this section is
28 otherwise established."

29 4. By renumbering and relettering as necessary.

By NANCY BOETTGER
ANDY MCKEAN
TOM VILSACK

S-3016 FILED JANUARY 23, 1995
ADOPTED

1 Section 1. Section 141.23, subsection 1, Code 1995, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. k. Counsel for the prosecution if a person
4 is charged with a crime which involves a dangerous weapon as
5 defined in section 702.7A sexual abuse in the second degree
6 pursuant to section 709.3 which also involves the knowing
7 transmission of HIV, sexual abuse in the third degree pursuant
8 to section 709.4 which also involves the knowing transmission
9 of HIV, or for the knowing transmission of HIV pursuant to
10 section 709.4A, for the sole purpose of establishing the
11 defendant's knowledge of the defendant's HIV status.

12 Sec. 2. Section 622.10, Code 1995, is amended by adding
13 the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. Notwithstanding the prohibitions
15 of this section, the physician of a person charged with a
16 crime in which a dangerous weapon as defined pursuant to
17 section 702.7A, is involved, sexual abuse in the second degree
18 pursuant to section 709.3 which also involves the knowing
19 transmission of the human immunodeficiency virus, or sexual
20 abuse in the third degree pursuant to section 709.4 which also
21 involves the knowing transmission of the human
22 immunodeficiency virus, or for the knowing transmission of the
23 human immunodeficiency virus pursuant to section 709.4A, as
24 human immunodeficiency virus is defined in section 141.21,
25 shall disclose information to the counsel for the prosecution
26 only to the extent that the information establishes the
27 defendant's knowledge of the defendant's human
28 immunodeficiency virus status.

29 Sec. 3. NEW SECTION. 702.7A DANGEROUS WEAPON --
30 INFECTIOUS BODILY FLUIDS.

31 For the purposes of sections 80A.4, 236.12, 708.1, 708.2,
32 708.2A, 708.2C, 708.6, 708.8, 708.11, 709.3, 710.3, 711.2,
33 713.4, 713.5, 713.6, and 719.1, "dangerous weapon" includes
34 the possibility of transfer of infectious bodily fluids as
35 defined in section 141.22A, when the alleged perpetrator knew

1 at the time of the commission of the offense that the person's
2 human immunodeficiency virus status was positive. The penalty
3 established for a crime cited in this section in which a
4 dangerous weapon is used or displayed, shall also apply to
5 crimes in which the dangerous weapon is defined pursuant to
6 this section, unless a specific penalty for the commission of
7 a crime by a person which involves the use or display of a
8 dangerous weapon as defined in this section is otherwise
9 established.

10 Sec. 4. Section 709.3, Code 1995, is amended to read as
11 follows:

12 709.3 SEXUAL ABUSE IN THE SECOND DEGREE.

13 A person commits sexual abuse in the second degree when the
14 person commits sexual abuse under any of the following
15 circumstances:

16 1. During the commission of sexual abuse the person
17 displays in a threatening manner a dangerous weapon, or uses
18 or threatens to use force creating a substantial risk of death
19 or serious injury to any person.

20 2. The other participant is under the age of twelve.

21 3. The person is aided or abetted by one or more persons
22 and the sex act is committed by force or against the will of
23 the other participant.

24 4. The offense under subsection 1, 2, or 3 involved the
25 possibility of transfer of infectious bodily fluids as defined
26 in section 141.22A, and the person knew at the time of the
27 commission of the offense that the person's human
28 immunodeficiency virus status was positive.

29 Sexual abuse in the second degree is a class "B" felony.
30 However, notwithstanding section 902.9, subsection 1, the
31 maximum sentence for a person convicted under subsection 4, is
32 for a period of confinement not to exceed fifty years.

33 Sec. 5. Section 709.4, Code 1995, is amended to read as
34 follows:

35 709.4 SEXUAL ABUSE IN THE THIRD DEGREE.

1 A person commits sexual abuse in the third degree when the
2 person performs a sex act under any of the following
3 circumstances:

4 1. The act is done by force or against the will of the
5 other participant, whether or not the other participant is the
6 person's spouse or is cohabiting with the person.

7 2. The act is between persons who are not at the time
8 cohabiting as husband and wife and if any of the following are
9 true:

10 a. The other participant is suffering from a mental defect
11 or incapacity which precludes giving consent.

12 b. The other participant is twelve or thirteen years of
13 age.

14 c. The other participant is fourteen or fifteen years of
15 age and any of the following are true:

16 (1) The person is a member of the same household as the
17 other participant.

18 (2) The person is related to the other participant by
19 blood or affinity to the fourth degree.

20 (3) The person is in a position of authority over the
21 other participant and uses that authority to coerce the other
22 participant to submit.

23 (4) The person is five or more years older than the other
24 participant.

25 3. The offense under subsection 1 or 2 involved the
26 possibility of transfer of infectious bodily fluids as defined
27 in section 141.22A, and the person knew at the time of the
28 commission of the offense that the person's human
29 immunodeficiency virus status was positive.

30 Sexual abuse in the third degree is a class "C" felony.
31 However, sexual abuse in the third degree, if committed
32 pursuant to subsection 3, is a class "B" felony.

33 Sec. 6. NEW SECTION. 709.4A SEXUAL ACTIVITY BY PERSON --
34 KNOWING TRANSMISSION OF HUMAN IMMUNODEFICIENCY VIRUS.

35 A person who engages in sexual activity with another

1 person, in a manner capable of transmitting the human
2 immunodeficiency virus, as determined by the centers for
3 disease control and prevention of the United States department
4 of health and human services and adopted by rule of the Iowa
5 department of public health, who knows at the time of
6 engagement in the sexual activity that the person's human
7 immunodeficiency virus status is positive and who does not
8 inform the other participant of the person's status prior to
9 the sexual activity, is guilty of a class "B" felony.
10 Notwithstanding section 902.9, subsection 1, the maximum
11 sentence of a person convicted under this section is a period
12 of confinement not to exceed fifty years.

- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35